

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

November 22, 1995

In Reply Refer to: 1800B2-KMS

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In re: WTDK(FM), Federalsburg, MD
Apex Associates, Inc.
File No. BMLH-950811KA
Request for Waiver of 47 C.F.R.
Section 73.1125

Dear Counsel:

This refers to the request dated August 11, 1995, filed on behalf of Apex Associates, Inc. ("Apex"), that the Commission waive its main studio rule, 47 C.F.R. Sec. 73.1125,¹ in order to permit station WTDK(FM), Federalsburg, Maryland to collocate its main studio with commonly owned station FM station WAAI, Hurlock, Maryland, which location is outside of WTDK(FM)'s principal community contour.

In support of the instant request, Apex asserts that collocation of the stations' main studios is desirable because it will enhance WTDK(FM)'s financial position; that it will improve public access to the WTDK(FM) studio, which it asserts is currently difficult; and that the proposed studio affords superior programming capabilities as compared to the facilities presently utilized by WTDK(FM). Apex further notes that the proposed studio is closer to the community of license than other sites you would be allowed to relocate to without seeking waiver of the rules.² If the waiver is granted, Apex further indicates that financial resources currently utilized to offset losses incurred by WTDK(FM) in maintaining its separate main studio could potentially be used to bolster the stations' local programming.

¹ 47 C.F.R. Sec. 73.1125(a) provides that: "each AM, FM and TV broadcast station shall maintain a main studio within the station's principal community contour."

²Specifically, Apex notes that the principal community contour of WTDK(FM) would permit location to a point 15 miles distant from Federalsburg, while the proposed main studio site is located only 7.5 miles distant.

The purpose of the main studio rule is to ensure that broadcast stations fulfill their obligation to meet the needs and interests of the residents of the community of license. See Main Studio and Program Origination Rules for Radio and Television Broadcast Stations ("Report and Order"), 2 FCC Rcd 3215, 3217-18 (1987), mod. in part, 3 FCC Rcd 5024 (1988). The Commission found that allowing a station to locate its main studio outside the community of license but within the principal community contour would achieve this goal³, while also providing additional flexibility to the station. The main studio rule allows an AM station to locate its main studio outside the station's principal community contour only if good cause for doing so exists and to do so would serve the public interest. See 47 C.F.R. Sec. 73.1125(a)(4). In the Report and Order, supra, the Commission noted that the additional flexibility given to stations to decide where to locate their main studio would also decrease the number of waiver requests, reducing administrative costs. 2 FCC Rcd at 3218. In order to justify a waiver of the main studio rule, applicants must show: (i) that there are no suitable studio locations anywhere within the station's principal community contour; and (ii) that a waiver would serve the public interest.

We believe that the circumstances presented here do not warrant a waiver of the rule. The Report and Order, supra, amended the main studio rule to accord greater flexibility to broadcast licensees, requiring that the main studio be located within the primary reception area in order to ensure "[e]xposure to daily community activities and other local media of communication" 2 FCC Rcd at 3218. In order to justify a waiver, applicants must clearly demonstrate : (i) that there are no suitable studio locations anywhere within the station's principal community contour; and (ii) that allowing such operation at variance with the Commission's relaxed studio standards advance the public interest. The Commission has held that, in the absence of a detailed showing of such special circumstances, it is contrary to our policy to authorize the relocation of the main studio of a broadcast station to a point outside the principal community contour. See, e.g., Maines Broadcasting, Inc., 8 FCC Rcd 5501 (1993); WAVY Television, Inc., 102 FCC 2d 1538 (1985).

In its waiver showing, Apex admits that suitable sites are likely available within WTDK(FM)'s principal community contour. It also concedes that it is "strong enough" to continue to cover the asserted ongoing losses associated with WTDK(FM), as it has done in the past. Even assuming, arguendo, that WTDK(FM)'s present main studio is less accessible to the public than an alternative site due to the quality of its access roads, that factor does not justify waiver of the rule, where, as here, no showing has been made that all suitable sites are unavailable within the principal community contour. Similarly, Apex has identified no policy or

³ The Commission noted that "[e]xposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements." 2 FCC Rcd at 3218.

precedent supporting justification for waiver on the basis that, in the present case, relocation without waiver may be made to a point somewhat more distant to the community of license than the proposed site. See WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969)(burden of justifying waiver squarely on proponent of waiver). Nor has Apex identified any "compelling reason," which, independently, warrants waiver in the instant case. In this connection, Apex has not demonstrated how any private benefit that would accrue to it through the collocation of the main studio, and the attendant cost savings, would translate into a tangible benefit to the Federalsburg public sufficient to justify a waiver.⁴

We thus conclude that allowing WTDK(FM) to collocate its main studio with WAAI at a point outside its principal community contour would contravene the policies of the Report and Order. In view of the above, Apex's request for waiver of 47 C.F.R. Sec. 73.1125 is, in all respects, DENIED.

Sincerely,

Linda Blair, Acting Chief
Audio Services Division
Mass Media Bureau

⁴In this regard, Apex asserts that the savings realized from collocating main studios would enable it to employ additional personnel at KAAI's facility capable of producing more local programming. In view of the fact that Apex is presently obligated to maintain a main studio for WTDK(FM) for the very purpose of maintaining local programming capability, its reluctance to do so in the absence of such enhanced savings reflects a private business judgment on its part, and not a basis for waiver.